

Summary of Governor's Proposed Horizontal Well Act

1. Section 5B-2B-4a is added to require an economic study related to the development of horizontal drilling as defined in the Act and opportunities arising as a result of horizontal drilling. The West Virginia Workforce Investment Council is to develop a report to include:
 - a. A review of the total number of jobs created;
 - b. A review of total payroll of all jobs created;
 - c. The average salary per job type;
 - d. A review of the number of employees domiciled in the State of West Virginia;
 - e. A review of total economic impact; and
 - f. The Council's recommendations for the establishment of an overall workforce investment public education agenda with goals and, specifically, to assist in maximizing the job creation opportunities in the State of West Virginia.
2. Sections 22C-7-1, 22C-7-2, and 22C-7-3 are repealed. These provisions relate to the Oil and Gas Inspectors Examining Board. The termination of this Board will transfer the certain functions previously performed by the Oil and Gas Inspectors Board to the Division of Personnel and the DEP.
3. Amendments to Sections 22-6-1, 22-6-2, 22C-8-2, and 22C-9-2 modify the definitions of deep well and shallow well to clarify that the drilling of shallow wells may enter the Onondaga formation to a depth of 100 feet for purposes other than production. This is a clarification designed to provide clear rules relating to the demarcation between deep and shallow wells.
4. Section 22-6-2a is created to provide guidelines for the hiring and payment of oil and gas inspectors. Essentially, an inspector must be a West Virginia citizen, have at least two years actual relevant experience in the oil and gas industry, one of which may be satisfied with relevant academic or relevant experience, and have good theoretical and practical knowledge of the industry. It also establishes a minimum salary of \$40,000 for an oil and gas supervisor and \$35,000 for an oil and gas inspector.
5. A new article, 22-6A-1 through 22-6A-24, known as the Horizontal Well Act, is created.
6. Sections 22-6A-1, 22-6A-2, 22-6A-3 set forth the title of the Act, the legislative findings and purpose, and the applicability of the Act. The Act is applicable to any natural gas well, other than a coalbed methane well, drilled using a horizontal drilling method, and which:

- a. Disturbs three acres or more of surface, excluding pipelines, gathering lines, and roads OR
- b. Utilizes more than 210,000 gallons of water in any 30 day period.

Importantly, horizontal wells permitted prior to the effective date of the new Act would not be subject to its requirements.

- 7. Section 22-6A-3a relates to regulation of horizontal drilling in karst formations. This section also requires the DEP to promulgate emergency and legislative rules establishing standards for horizontal well operations in karst regions of the state, and to review the regulatory program to determine whether oil and gas rules need to be revised further to address drilling in karst areas.
- 8. Section 22-6A-4 defines the following terms used in Act: Best Management Practices, Department, Flowback Recycle Pit, Freshwater Impoundment, Horizontal Drilling, Horizontal Well, Impoundment, Karst Terrain, Perennial Stream, Pit, Secretary, and Water Purveyor.
- 9. Section 22-6A-5 incorporates many provisions of Article 22-6, to the extent that horizontal wells are similar to conventional wells, relating to the drilling of conventional oil and gas wells generally, into Article 22-6A. Those sections are as follows:
 - a. Sec. 3 - inspector findings and orders;
 - b. Sec. 4 - review of findings and orders by secretary;
 - c. Sec. 5 - requirements for findings, order and notices;
 - d. Sec. 7 - issuance of water pollution control permits;
 - e. Sec. 8 - prohibition of permits for wells on flat rate well royalty leases;
 - f. Sec. 10 - procedure for filing comments; certification of notice (Note that the Act increases the comment period from 15 to 30 days);
 - g. Sec. 12 - plat prerequisites with two changes (30 days instead of 15 days and plats shall identify surface tract boundaries);
 - h. Sec. 13 - notice of fracturing with one change (30 days instead of 15 days);
 - i. Sec. 15 - deep well objections with one change (30 days instead of 15 days);

- j. Sec. 17 - shallow well objections with one change (30 days instead of 15 days);
- k. Sec. 18 - protective devices when penetrating a coal seam;
- l. Sec. 19 - protective devices for life of well;
- m. Sec. 20 - protective devices when penetrating a coal seam that has been mined through;
- n. Sec. 21 - freshwater casings;
- o. Sec. 22 - filing of reports;
- p. Sec. 27 - cause of action for explosions;
- q. Sec. 28 - supervision of secretary;
- r. Sec. 29 - funds with reference to permit fees contained in this article;
- s. Sec. 31 - prevention of waste of gas;
- t. Sec. 32 - rights of adjacent owners to prevent waste of gas;
- u. Sec. 33 - circuit court actions to restrain waste;
- v. Sec. 36 - declaration of coal seam owner and lessees;
- w. Sec. 39 - injunctive relief; and
- x. Sec. 40 - judicial review.

Any conflict between incorporated sections from article six and sections in this new article will be resolved in favor of the provisions in the new Horizontal Well Act.

- 10. Section 22-6A-6 provides powers and duties to the Secretary. This section gives the Secretary sole authority to regulate all horizontal wells, to use oil and gas inspectors or any employee in the Office of Oil and Gas to enforce the Act, to promulgate rules to implement the Act, and to make investigations and inspections to ensure compliance with the Act.
- 11. Section 22-6A-7 provides requirements for the filing of an application and related documentation as well as fees.

- a. Fees are \$10,000 for the first well on a pad and \$5,000 for each additional well on a single pad.
- b. Additionally, an operator must file an application for a permit containing the following information:
 - i. Name & address of applicant and agent and those entitled to notice;
 - ii. Name & address of every ongoing coal operation and owner and lessee of record of coal seams not yet operating beneath the tract of land on which well is or may be located;
 - iii. Identification of well as required by the Secretary and well work for which the permit is requested;
 - iv. Approximate or actual depth of well drilled;
 - v. Each formation involved;
 - vi. Entire casing program for each well, if required;
 - vii. Information regarding conversion or plugging of existing wells;
 - viii. With respect to stimulation of horizontal wells, all information required to demonstrate compliance with Section 5 requirements;
 - ix. Soil and erosion control plan which addresses, among other things, methods of stabilization and drainage and method of reclamation in compliance with Section 12; and
 - x. Well site safety plan.
- c. Operators must certify that they have provided the requisite notices required by the Act.
- d. Operations withdrawing more than 210,000 gallons from waters of the State in any month must include a Water Management Plan addressing the following:
 - i. Type & source of water, location by latitude & longitude within 48 hours prior to withdrawal and sign identifying location as required by Section 8;
 - ii. Anticipated volume of each withdrawal;

- iii. Anticipated months of withdrawal;
 - iv. Plan to dispose of wastewater;
 - v. Listing of anticipated additives used in fracturing fluid and additives actually used after completion of fracturing operations;
 - vi. Water Resources Protection Plan addressing information required in Water Management Plan & the following:
 - (1) List of current designated & existing water uses & public water intakes within one mile of withdrawal location;
 - (2) Demonstration that sufficient in-stream flow will be available immediately below withdrawal point; and
 - (3) Method of surface water withdrawal to protect aquatic life.
 - e. Section 22-6A-7 also provides for the operator designating an agent, installing permit number, and distributing the well site safety plan to local emergency planning committees prior to commencing construction.
12. Section 22-6A-8 provides for the DEP's review of the permit. Section 8 adopts many of the provisions of Article 6 relating to permit review, including the following:
- a. The Secretary must ensure that the operator is in good standing with the Insurance Commission and the Unemployment Compensation Commission;
 - b. The Secretary may not issue a permit or may condition the issuance of a permit if:
 - i. The well work will constitute a hazard to the safety of persons;
 - ii. The plan for soil erosion and sediment control is not adequate or effective;
 - iii. Damage would occur to publicly owned lands or resources; or
 - iv. The well work fails to protect fresh water sources or supplies;

- c. The operator must comply with all well location restrictions (unless waived or a variance granted) and any required water management plan must be acceptable to the Secretary;
- d. The operator must:
 - i. Adopt appropriate best management practices;
 - ii. Plug wells as required by Act;
 - iii. Dispose of drill cuttings in landfills unless on-site management is approved by the Secretary;
 - iv. Take action pursuant to industry standards to minimize fire hazards or conditions harmful to public health and safety; and
 - v. Protect quality and quantity of surface water and groundwater;
- e. For horizontal wells using more than 210,000 gallons of water in a thirty day period, the operator must take actions concerning water used, including identifying water withdrawal locations; recording water used in fracturing process;
- f. The permit may not be issued less than 30 days after the filing date of the application unless the operator certifies that all parties entitled to notice have been provided such notice and files statements of no objection by such persons.

The Act preserves the common law doctrine of riparian rights.

- 13. Section 22-6A-9 requires that operators obtain a certificate of approval from the DEP for pits and impoundments not associated with a well work permit that have a capacity of 210,000 gallons or more and provides DEP with authority to regulate these pits and impoundments.
- 14. Section 22-6A-10 relates to notice.
 - a. This Section requires an operator, prior to filing a permit application, to give notice to the surface owner of at least 72 hours but not more than 45 days prior to entering to conduct any plat surveys required by this Act. This Section also requires that the following persons must receive copies of all applications and approvals required by the Act and all plats, and erosion and sediment and control plans no later than the filing date of the application:

- i. Surface owners of record of land proposed for well site, roads, or impoundments;
 - ii. Water purveyors;
 - iii. Any surface owner with a water well within 1,500 feet of the center of the well pad;
 - iv. Coal owners, operators, or lessees of land on which the well is to be drilled; and
 - v. Operators of any natural gas storage field within which the well work activity is to take place.
 - b. The DEP is required semiannually to publish notice statewide that any individuals may view any and all filings at the DEP's website and may also register to receive notifications of permit applications by county of interest.
 - c. Persons entitled to notice are also entitled to seven days' notice of commencement of well work or site preparation work.
 - d. The operator must also provide notice prior to conducting seismic activity.
15. Section 22-6A-11 relates to the filing of comments and objections. It provides that any person entitled to notice may file comments at the DEP. Just as with current law, affected coal operators, seam owners and lessees may object to permits, and the same dispute resolution provisions under Article 6 are applicable.
 16. Section 22-6A-12 provides well location restrictions. This Section establishes a buffer zone of 250 feet from existing water wells, 625 feet between well sites and residences and certain agricultural structures. Additionally, it provides that a well site cannot be drilled within 100 feet of any perennial stream, water body, or wetland; within 300 feet of a naturally producing trout stream; and within 1,000 feet of a public surface water or groundwater intake.
 17. Section 22-6A-13 relates to the plugging of horizontal wells and allows the DEP to promulgate rules for these activities.
 18. Section 22-6A-14 relates to reclamation. With respect to well pads designed for a single horizontal well, the bill requires that surface disturbance be reclaimed within six months after the horizontal well is drilled and completed. With respect to well pads designed for multiple horizontal wells, the bill requires that partial reclamation begin upon completion of the construction of the well pad. Partial reclamation requires an operator

to grade or terrace and plant or seed the surface disturbed that is not required for drilling, completing or producing any of the horizontal wells. Partial reclamation does not, however, require the operator to fill all pits and impoundments on the well pad. Partial reclamation of well pads designed for multiple horizontal wells shall satisfy the reclamation requirements of the bill for (i) a maximum of twenty-four months between drilling and completion of horizontal wells on the well pad or (ii) a maximum aggregate period, regardless of how many wells are drilled on the well pad, of five years.

19. Section 22-6A-15 relates to performance bonds. This section requires an operator to furnish a \$50,000 bond to guarantee compliance with all requirements of the Act for each horizontal well drilled. If multiple wells are drilled or stimulated, the operator can furnish a blanket bond of \$250,000 to cover all wells. No bond may be released until the operator satisfies all requirements of the Act. Provision is also made for assignment or transfer and bond forfeiture and collection. These bonding requirements are similar to current law in the conventional gas statutes.
20. Section 22-6A-16 relates to compensation of surface owners for drilling operation. Under current law, operators are obligated under Article 22-7 to compensate surface owners for use of the land and related items. Section 22-6A-16 requires operators, on or before the filing of a permit, to offer the surface owner compensation for those damages in the form of a surface use and compensation agreement. In doing so, the operator is required to give the surface owner a copy of the new Article 6B, which relates to damages owed to a surface owner relating to a horizontal well.
21. Section 22-6A-17 provides for the reimbursement of property taxes and provides for a one-time payment of \$2,500 to a surface owner to compensate for payment of real property taxes for surface land encumbered or disturbed by the construction and operation of surface wells.
22. Just as provided in Article 6, Section 22-6A-18 relates to a presumption for contamination or diminution of a fresh water source.
 - a. This Section establishes a rebuttable presumption that contamination or loss of fresh water source or supply within 1,500 feet of a gas well site is caused by gas operation. This Section also establishes five defenses to the presumption:
 - i. Pollution existed prior to drilling or alteration activity as established by predrilling or pre-alteration survey;

- ii. Landowner or water purveyor refused operator permission to perform predrilling or pre-alteration survey;
 - iii. Water supply is not within 1500 feet of well;
 - iv. Pollution occurred more than 6 months after drilling; or
 - v. Water pollution caused by something else.
 - b. This section also permits the DEP to require an operator to replace affected water supply unless waived by property owner, provide an emergency drinking water supply within 24 hours and temporary water supply within 72 hours, provide permanent water supply within 2 years, and pay all reasonable costs incurred by property owner in securing water supply.
23. Section 22-6A-19 provides for civil penalties for violations of the Act and related items.
24. Section 22-6A-20 provides for the appropriate maintenance and repair of roadways. It provides that an operator, as part of a permit application, must submit a letter of certification from the Division of Highways that the operator has an agreement pertaining to the state local service roads (secondary roads) associated with the well work to maintain and repair those roads or to certify that they are not required to enter into such agreement and the reasons therefor.
25. Section 22-6A-21 provides that the DEP shall establish a website that contains permit filings and electronic notice of filings.
26. Section 22-6A-22 provides for the DEP to study possible health impacts related to air quality.
27. Section 22-6A-23 provides for the DEP to study impoundment and pit safety.
28. Section 22-6A-24 provides casing and cementing standards and rulemaking authority for the DEP. This Section requires that the casings be constructed in a manner that provides for control of the well at all times, prevent the migration of gas and other fluids into the fresh groundwater and coal seams, and prevent pollution or diminution of fresh groundwater. The rules must also provide for revisions to the casing program and requires rules development on casing type and cement type, and requires the use of nationally recognized standards. The provision also maintains discretion in the Secretary to grant waivers and revisions to standards and procedures.

29. Article 22-6B-1 through 22-6B-8 is the Oil and Gas Horizontal Well Production Damage Compensation Act. This Act is similar to Article 22-7, and provides for compensation for landowners for land disturbed and used during construction and production.